

Enrolled House Bill 2110

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Secretary of State Shemia Fagan)

CHAPTER

AN ACT

Relating to municipal audits; creating new provisions; amending ORS 297.425, 297.435, 297.445, 297.465, 297.466, 297.471, 297.475, 297.485, 297.525 and 297.720; and repealing ORS 297.455, 297.459 and 297.701.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 297.466 is amended to read:

297.466. (1) In performing an audit and review required under ORS 297.425, the accountant under contract with the municipal corporation or the Secretary of State, whoever performs the audit and review, shall determine if the municipal corporation has, or has not, followed generally accepted accounting principles in reporting its financial condition and operations, established appropriate accounting systems and internal controls and substantially complied with legal requirements in conducting its financial affairs. The determination shall either be included in the signed expression of opinion or otherwise disclosed in the audit report required under ORS 297.465.

(2) Upon receipt of an audit report under ORS 297.465, the governing body of a municipal corporation shall determine the measures it considers necessary to address any deficiencies disclosed in the report. The governing body shall adopt a plan of action to address the deficiencies. The plan must include the estimated period of time necessary to complete the planned actions.

(3)[(a)] Within 30 days after filing an audit report with the Secretary of State under ORS 297.465, a municipal corporation shall file with the secretary a copy of the plan of action adopted under subsection (2) of this section.

[(b) At the request of the governing body of the municipal corporation, the secretary shall make suggestions for addressing the deficiencies cited in the audit report.]

[(c) For counties and cities, upon receipt by the secretary of the audit report and the plan of action adopted under subsection (2) of this section, the secretary shall either acknowledge the county or city's plan of action to address the deficiencies cited in the audit report or notify the county or city of deficiencies that, if not addressed, could result in withholding of funds under this section. If the governing body of the county or city does not agree with the notification by the secretary, the secretary shall provide the governing body with an opportunity for a conference regarding the notification, audit determinations or corrective measures to be taken.]

[(4) If the Secretary of State determines that a county or city has not filed an audit report with the secretary as required under ORS 297.465, the secretary may certify the determination to the State Treasurer, the Director of the Department of Revenue, the Director of Transportation and the Director of the Oregon Department of Administrative Services.]

[(5) If the Secretary of State concurs with determinations made under subsection (1) of this section in two successive audits and reviews of the same county or city, and determines that the governing body of the county or city has not taken adequate action to address the deficiencies cited in the notifications given under subsection (3) of this section, the secretary may certify the determination to the State Treasurer, the Director of the Department of Revenue, the Director of Transportation and the Director of the Oregon Department of Administrative Services. The certificate of the secretary under this subsection may be issued only after notice, opportunity to be heard and hearing pursuant to the provisions of ORS chapter 183, governing contested cases. The hearing shall be held within the jurisdiction of the county or city.]

[(6) Upon receipt of a certificate from the Secretary of State under subsection (4) or (5) of this section, the State Treasurer, the Director of the Department of Revenue, the Director of Transportation and the Director of the Oregon Department of Administrative Services shall withhold from distribution to the county or city 10 percent of the moneys otherwise to be distributed to it under ORS 221.770, 323.455, 366.762 to 366.768, 366.785 to 366.820, 471.805 and 471.810. The moneys withheld shall be disbursed to the county or city only after the officer responsible for disbursement has received notice from the secretary that:]

[(a) The county or city has filed the audit report required under ORS 297.465 with the secretary; or]

[(b) The governing body of the county or city has taken action to follow generally accepted accounting principles in reporting financial condition and operations and establish appropriate accounting systems and internal controls and will substantially comply with legal requirements in conducting its financial affairs.]

[(7) The Secretary of State may not issue a certificate under subsection (5) of this section for failure to follow generally accepted accounting principles if a county or city has followed accounting practices authorized by state law.]

[(8) (4) As used in this section, “generally accepted accounting principles” means those accounting principles sanctioned by recognized authoritative bodies such as the Governmental Accounting Standards Board, the American Institute of Certified Public Accountants, the Financial Accounting Standards Board or their successors.

SECTION 2. ORS 297.435 is amended to read:

297.435. (1) Subject to ORS 297.445, ORS 297.425 does not apply to any municipal corporation, except a county or a school district, if, with respect to any one *[calendar year or]* fiscal year, the municipal corporation meets all the conditions in either subsection (2) or (3) of this section.

(2)(a) Total expenditures *[for all purposes, including moneys expended for debt retirement,]* did not exceed *[\$150,000]* **\$250,000** for the year;

(b) The municipal corporation has submitted financial statements for the year to the Secretary of State within 90 days following the end of the year; and

(c) A certificate has been submitted with the financial statements stating that the principal responsible official of the municipal corporation was covered during the entire year by a fidelity or faithful performance bond in an amount at least equal to the total amount of moneys received by the municipal corporation during the year.

(3)(a) Total expenditures *[for all purposes, including moneys expended for debt retirement,]* exceeded *[\$150,000]* **\$250,000** but did not exceed *[\$500,000]* **\$1,000,000** for the year;

(b) The municipal corporation has submitted financial statements for the year to the Secretary of State within 180 days following the end of the year, and *[the financial statements have been reviewed by an accountant or the Secretary of State in accordance with standards prescribed by the Secretary of State]* **an accountant or the Secretary of State has performed the procedures established under subsection (5) of this section on the financial statements;** and

(c) A certificate has been submitted with the financial statements stating that the official responsible for receiving and disbursing moneys on behalf of the municipal corporation was covered during the entire year by a fidelity or faithful performance bond in an amount at least equal to 10 percent of the total receipts for the year, but not less than *[\$10,000]* **\$25,000**.

(4) The financial statements required by this section shall be in a form prescribed by the Secretary of State and shall be considered audit reports for the purpose of the filing fee required by ORS 297.485.

[(5) The provisions of ORS 297.466 apply to financial statements for cities reviewed under subsection (3) of this section.]

(5)(a) The Secretary of State shall, by rule, establish procedures to be performed on financial statements under subsection (3) of this section that the secretary deems appropriate to:

(A) Address risks to municipal corporations; and

(B) Ensure compliance by municipal corporations with applicable laws.

(b) In adopting or amending rules under this subsection, the Secretary of State shall consult with the Oregon Board of Accountancy, the Oregon Society of Certified Public Accountants and one or more organizations representing municipal corporations.

SECTION 3. The Secretary of State shall, by rule, specify categories and types of spending that constitute expenditures for purposes of ORS 297.435 and 297.485.

SECTION 4. ORS 297.425 is amended to read:

297.425. (1) Except as provided in ORS 297.435, the accounts and fiscal affairs of every municipal corporation shall be audited and reviewed at least once each *[calendar or]* fiscal year~~], and more often if considered advisable by the governing body or managing or executive officer of the municipal corporation]~~. The audits and reviews shall be made by accountants pursuant to contracts entered into by the governing body, or managing or executive officer, and accountants, or by the Secretary of State pursuant to a duly adopted ordinance or resolution. Upon request of the secretary, the governing body, or managing or executive officer, shall provide the secretary with a copy of the contract entered into or an ordinance or resolution adopted under this section.

(2) The compensation for audits and reviews performed by accountants shall be as agreed upon between the governing body, or managing or executive officer of the municipal corporation, and the accountant, and shall be paid in the same manner as other claims against the municipal corporation are paid.

(3) All expenses and costs incurred by the Secretary of State in conducting audits and reviews for municipal corporations shall be borne by the municipal corporation for which a particular audit or review is made. The expenses and costs shall be paid to the secretary in the same manner as other claims against the municipal corporation are paid.

(4) Audits and reviews required by this section shall *[inquire into:]*

[(a) The principles of accounting and methods followed by the municipal corporation in recording, summarizing and reporting its financial transactions and financial condition;]

[(b) The accuracy and legality of the transactions, accounts, records, files and financial reports of the officers and employees of the municipal corporation as they relate to its fiscal affairs; and]

[(c) Compliance with requirements, orders and regulations of other public officials which pertain to the financial condition or financial operations of the municipal corporation.] **be performed in accordance with standards promulgated by the American Institute of Certified Public Accountants and shall inquire into principles of accounting, methods of operations and compliance with regulations as identified by rule of the Secretary of State.**

SECTION 5. ORS 297.455 and 297.459 are repealed.

SECTION 6. ORS 297.465 is amended to read:

297.465. (1) The Secretary of State, in cooperation with the Oregon Board of Accountancy, and in consultation with the Oregon Society of Certified Public Accountants, shall prescribe the minimum standards for conducting audits of municipal corporations, preparing the resulting audit reports and expressing opinions upon the financial condition and results of operation for the period under audit. The expression of opinion shall be signed by the accountant signing the contract, or in the case of a partnership or professional corporation, by a partner or stockholder who is an accountant as defined in ORS 297.405, who has personally conducted the audit to an extent satisfactory to the secretary and to the municipal corporation.

(2) The municipal corporation shall be furnished with a written audit report, containing a signed expression of opinion, in the form prescribed by the Secretary of State. A copy of the audit report shall be furnished to each person who was a member of the governing body at the end of the [calendar or] fiscal year and to each member of the current governing body. [Other copies shall be furnished the municipal corporation as are requested by the chairperson of the governing body or the managing or executive officer.] The accountant shall furnish the audit report to the municipal corporation within six months after the close of the [calendar or] fiscal year under audit, unless the secretary has granted the municipal corporation an extension under subsection (3) of this section.

(3)(a) The municipal corporation shall file one copy of its audit report with the Secretary of State within six months after the close of the [calendar or] fiscal year under audit, unless the secretary, for good cause shown, grants to the municipal corporation a reasonable extension of time. The extension may not exceed one year after the close of the [calendar or] fiscal year under audit unless the secretary finds that extraordinary circumstances justify a longer extension. A municipal corporation is delinquent for purposes of the filing requirement under this subsection if the municipal corporation does not file the audit report by the deadline or any extended deadline described in this subsection.

(b) The report is subject to review by the secretary, who may also require submission of the supporting documentation and audit programs of the accountant.

(c) If an audit, audit report or expression of opinion is found by the secretary not to be in accordance with the prescribed standards, the secretary shall request compliance. [If the accountant fails to comply with the request,] The secretary [shall] **may** report the [failure] **request** to comply to the Oregon Board of Accountancy, which may **investigate the accountant's work or** remove or suspend the name of the accountant from the roster required by ORS 297.670.

(4) Audit reports or financial statements filed with the Secretary of State as required by ORS 297.405 to 297.555 shall include the names, **physical or electronic** mailing addresses and titles of the officers and members of the governing board of the municipal corporation. The report or statement of a special district shall include the name of its registered agent and the address of its registered office as provided by ORS 198.335 to 198.365.

SECTION 7. ORS 297.485 is amended to read:

297.485. (1) At the time an audit report, prepared by an accountant, is filed with the Secretary of State, as required by ORS 297.465, the municipal corporation shall pay to the Secretary of State a filing fee. The filing fee shall be determined by the total expenditures made by the municipal corporation [for any and all purposes] during the [calendar or] fiscal year audited[, except that expenditures for principal of bonded debt, principal of short-term loans, principal of warrants redeemed which were issued during prior audit periods, transfers or loans between funds and turnovers of taxes or other trust moneys to other municipal corporations shall not be included in the total expenditures upon which the amount of the fee is based].

(2) The filing fee to be paid shall be as indicated for those municipal corporations whose total expenditures fall within the classifications as follows:

[_____]			
	<i>Over</i>	<i>Not Over</i>	<i>Fee</i>
		\$ 50,000	\$ 20
\$	50,000	150,000	40
	150,000	500,000	150
	500,000	1,000,000	200
	1,000,000	5,000,000	250
	5,000,000	10,000,000	300
	10,000,000	50,000,000	350
	50,000,000		400
[_____]			

	Over	Not Over	Fee
		\$ 50,000	\$ 40
\$	50,000	150,000	80
	150,000	250,000	150
	250,000	500,000	250
	500,000	1,000,000	300
	1,000,000	5,000,000	350
	5,000,000	10,000,000	400
	10,000,000	50,000,000	450
	50,000,000		500

(3) Audit reports filed by the administrative office of the county, under ORS 328.465 (2), for school districts with less than 1,000 children according to the latest school census in the county, shall be considered one report for purposes of the filing fee required by this section. The filing fee shall be paid by the county administrative office and deducted pro rata from moneys due to the several school districts.

SECTION 8. ORS 297.525 is amended to read:

297.525. The annual audit required to be made of the accounts and fiscal affairs of a county shall include a cost audit, **in accordance with rules of the Secretary of State**, of the cost account for county road work.

SECTION 9. ORS 297.701 is repealed.

SECTION 10. ORS 297.720 is amended to read:

297.720. Every auditor or accountant whose name is included on the roster of authorized accountants referred to in ORS 297.670 shall pay to the Oregon Board of Accountancy biennially a fee for continuance thereon. The fee shall be in an amount [*not to exceed \$100 as*] determined by the board by rule.

SECTION 11. ORS 297.445 is amended to read:

297.445. (1) ORS 297.435 does not apply to a municipal corporation for any [*calendar or*] fiscal year if a petition requesting an audit, signed by residents of the municipal corporation who are subject to taxes, fees, assessments or other charges levied by the municipal corporation, is filed with the Secretary of State within six months of the end of the fiscal year for which the audit is requested. In a municipal corporation with a population of 150 or less, the petition must be signed by at least 10 residents. In a municipal corporation with a population of more than 150, the petition must be signed by at least 30 residents.

(2) The Secretary of State shall give notice of the petition to the governing body of the municipal corporation within 10 days of its receipt. Upon receipt of notice of the petition from the Secretary of State, the governing body or managing or executive officer of the municipal corporation shall immediately comply with the provisions of ORS 297.425. If a copy of a signed contract between the governing body or managing or executive officer and an accountant, or a duly authorized ordinance or resolution requesting an audit by the Secretary of State, is not received within 30 days of the dispatch of notice of petition, the Secretary of State shall cause an audit and review to be made of the accounts and fiscal affairs of the municipal corporation designated in the petition.

(3) The costs incurred by the Secretary of State in making the audit and review shall be borne by the municipal corporation, and shall be paid to the Secretary of State in the same manner as other claims against the municipal corporation.

SECTION 12. ORS 297.471 is amended to read:

297.471. (1) For each [*calendar or*] fiscal year under audit, the Secretary of State shall prepare and maintain a summary report that includes, at a minimum:

(a) A list of the municipal corporations that were required to file audit reports with the secretary for the [calendar or] fiscal year as required by ORS 297.405 to 297.555;

(b) A list of the municipal corporations that filed audit reports with the secretary within six months after the close of the [calendar or] fiscal year under audit;

(c) A list of the municipal corporations that did not request a filing extension and did not file audit reports with the secretary within six months after the close of the [calendar or] fiscal year under audit;

(d) A list of the municipal corporations that requested and were granted filing extensions and either filed or did not file audit reports with the secretary in accordance with the approved extension;

(e) A list of the number and type of deficiencies cited in the audit report by the accountants for each municipal corporation for the [calendar or] fiscal year under audit; and

(f) A description of whether the municipal corporation submitted a plan of action for deficiencies cited in the audit report for the [calendar or] fiscal year under audit to the secretary as described in ORS 297.466 (2) and (3).

(2) Not later than March 1 of each odd-numbered year, the Secretary of State shall submit to the appropriate legislative committee with authority over audits copies of the two most recent summary reports prepared under subsection (1) of this section. The secretary shall make the summary reports available for public inspection in accordance with the secretary's established procedures.

SECTION 13. ORS 297.475 is amended to read:

297.475. Whenever any municipal corporation has made a request to the Secretary of State, pursuant to ORS 297.425, for the audit of its accounts and fiscal affairs, the municipal corporation may cancel that request by ordinance or resolution adopted and furnished to the Secretary of State at least 90 days prior to the end of a [calendar or] fiscal year.

Passed by House February 9, 2023

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

Passed by Senate March 16, 2023

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Rob Wagner, President of Senate

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

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Shemia Fagan, Secretary of State